



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION II  
26 FEDERAL PLAZA  
NEW YORK, NEW YORK 10007

335002

May 23, 1980

Francis Journick, Esq.  
Wilentz, Goldman & Spitzer  
900 Route 9  
Woodbridge, New Jersey 07095

Re: Duane Marine Corporation; Viola-  
tion of 40 C.F.R. Part 112  
Docket No.: OH-II-79-66

Dear Mr. Journick:

Since I have been unable to speak with you during the last few days because of your busy meeting schedule, it is necessary for me to write you to delineate EPA's position in the matter of Duane Marine's violation of the Oil Pollution Prevention Regulations. The above-docketed Notice of Violation (NOV) was issued against your client on December 18, 1979, informing it that it was not in compliance with 40 C.F.R. Part 112. Since then, your client has made essentially no good faith effort to comply with the law by having an SPCC Plan prepared by a professional engineer and by committing itself to a schedule of implementation of the Plan.

Normally, the next step to take where a respondent under a 40 C.F.R. Part 112 action fails to voluntarily comply in a timely manner is to seek injunctive relief in federal district court, together with a demand for the full amount of penalty assessed by the NOV (in the case of your client, \$10,000). However, Mr. Brauth's letter of December 26, 1979 preserved the client's right to an administrative hearing on the factual questions of whether Duane Marine actually failed to prepare and implement an SPCC Plan at the Perth Amboy facility.

Although I personally think there is little to be gained by going through the motions of such a hearing on the particular issues which your client has proposed, the exhaustion of its administrative remedies is a step which must be completed in the event that it becomes necessary to proceed to district court.

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Emergency Response  
and Inspection Branch  
Edison, N. J.

Therefore, kindly provide me with several alternate dates during the period June 2 through June 20, 1980 when your client will be able to appear at these offices for such a hearing.

I regret having to take this approach, but I am certain you can appreciate that it is necessary for me to assure that the matter of Duane Marine does not stagnate due to inaction of either your client or the Agency. Half a year has already elapsed with no additional protection afforded to the environment resulting from commencement of EPA's action. I regret that this violation could not be settled by consent of your client.

Sincerely yours,

Henry Gluckstern  
Attorney  
Enforcement Division

cc: Fred Rubel  
Chief  
Emergency Response